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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,958	09/05/2003	Jeannette Martello		7933

7590 01/11/2006
Terry M. Gernstein
1015 Salt Meadow Lane
McLean, VA 22101

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3733

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/654,958	MARTELLO, JEANNETTE	
	Examiner	Art Unit	
	Pedro Philogene	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-39, 41, 47-50 and 55-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-39, 41, 47-50 and 55-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

In the responses filed 12/15/05, and as per our telephone conversation on 12/05/05, the examiner agrees with applicant that claims 35-39,41, 47-50, 55-57, read on the elected species of FIGS 5A, 5B. Therefore, claims 35-39,41,47-50,55-57 are reinstated and an Office Action will follow.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-39, 41, 47-50, 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grotz (5,782,865) in view of Stevens (3,579,831).

With respect to claims 35,37,39, 41, 47, 48, 55, Grotz discloses a surgical anchor comprising a threaded anchor body (6) having a long axis and an outer dimension. The anchor also includes a first end or head (3) which is adapted to accommodate a tool, as best seen in FIG.1,2. The first end (3) has an outer dimension which is greater than the outer dimension of the anchor body (6); as best seen in FIG.4A-B. The anchor (1) further includes at least one suture-accommodating passage (9) defined in the first end. The passage has a portion near an end of the outer dimension. The suture-accommodating passage being oriented so that neither the suture-accommodating

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passage nor an extension of the suture-accommodating passage intersect the long axis of the threaded anchor body; as best seen in FIG. 5.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

It is noted that Grotz teaches all the limitations; except for the second end of each anchor hole being spaced farther from the patient's bone than the first end of the anchor holes when the anchor body is engaged in the patient's bone; as claimed by applicant. However, in a similar art, Stevens, evidences the use of each anchor hole having a first end and second end, the second end of each anchor hole being spaced farther from the patient's bone than the first end of the anchor hole when the anchor body is engaged in the patient's bone to stabilize the anchor in the bone so that as a result of the stabilizing the anchor will be reliably retained in the bone.

Therefore, given the teaching of Stevens, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the anchor hole of Grotz, as taught by Stevens to stabilize the anchor in the bone so that as a result of the stabilizing the anchor will be reliably retained in the bone.

With respect to claims 36, 38, 49, 50, 56, 57, the above combination of references teach all the limitations, as best seen in FIGS. 4A-B and FIG. 5 of Grotz and as best seen in FIGS. 1-4 of Stevens.

Response to Amendment

Applicant's arguments, see Remark, filed 12/16/05, with respect to the rejection(s) of claim(s) 41 under 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Grotz/Stevens.

Furthermore, the final rejection of claim 41 is vacated.

Conclusion

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
January 09, 2006


PEDRO PHILOGENE
PRIMARY EXAMINER